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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/760,905
Filing Date: January 17, 2001
Appellant(s): GORDON, STEPHEN L.

Steven L. Gordon
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 29, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is deficient because part of Appellant's summary includes arguments in contention, which Examiner does not agree are part of Appellant's invention.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because of claim dependencies and similarities of limitations, Examiner believes that:

Claims 1-2 stand or fall together as stated by Appellant.

Claims 3-11 and 22-23 stand or fall together.

Claims 12-21 stand or fall together.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6,592,223 Stern et al. 7-1995

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the Appellant regards as his invention.

Claims 10, 11, 16, 17, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention.

Claims 10 and 20 state "useable by laymen in the field of ergonomic" is deemed to be relative. Basically Appellant is claiming "easy to use."

The limitation is an "intended use," a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claim 16 states "implemented by laymen in the field of ergonomics" is relative, like claiming "easy to understand." Similar in nature to "intended use."

Claims 11 and 17 state wherein ergonomic programs conform to government regulations where the government is not deemed to have regulations regarding software programs.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the Appellant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the Appellant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Stern et al. U.S. Patent No. 6,592,223 ('Stern').

Stern discloses:

As to claim 1,

an interactive web-site including certain ergonomics resources, said resources including at least one ergonomics program that includes, in turn, at least one database; See Fig. 3; 5:31-43; 6:40-47;

a computer remote from said web-site; See Fig. 3; 5:31-43; 6:40-47;
access means for interactively connecting said web-site and said remote computer; See Fig. 3; 5:31-43; 6:40-47; and,
means to provide at least one report related to said ergonomics resources; See ;
See Fig. 3; 5:31-43; 6:40-47.

As to claim 2,

said ergonomics resource system is an expert system usable by laymen wherein said user is deemed to include laymen and the system that uses analysis and recommendation system deemed to be an expert system expert; See Fig. 3; 5:31-43; 6:40-47;

said at least one database includes controls for at least one work-site (corporate); See Fig. 3; 5:31-43; 6:40-47;

said remote computer may be operated by a user of said system; See Fig. 3; 5:31-43; 6:40-47;

said report, observable at said remote computer, includes controls for said at least one work-site; See Fig. 3; 5:31-43; 6:40-47.

As to claim 3,

an interactive web-site including certain ergonomics resources, said resources including a plurality of ergonomics programs that include, in turn, at least one database for a plurality of specific work-sites wherein corporate is deemed to include a plurality of work-sites; See Fig. 3; 5:31-43; 6:40-47;

a computer remote from said web-site that may be operated by a user of said system; See Fig. 3; 5:31-43; 6:40-47;

access means for interactively connecting said web-site and said remote computer; See Fig. 3; 5:31-43; 6:40-47;

means contained within said web-site for proposing certain questions to a user, obtaining answers thereto from a user, and analyzing said answers for certain ergonomics related information, all to define a work-site of interest; See Fig. 3; 5:31-43; 6:40-47;

means for extracting a specific ergonomics program from said database related to said work-site of interest; See Fig. 3; 5:31-43; 6:40-47; and,

means for making said extracted ergonomics program available to a user in the form of one or more reports; See Fig. 3; 5:31-43; 6:40-47.

As to claim 4.

wherein said one or more reports includes a report with specific controls related to said work-site of interest wherein the analysis is deemed to include all data; See Fig. 3; 5:31-43; 6:40-47.

As to claim 5,

wherein said system is an expert system and said report may be understood and said ergonomics program implemented, by laymen in the field of ergonomics wherein a user is deemed to include laymen in the field of ergonomics; See Fig. 3; 5:31-43; 6:40-47.

As to claim 6,

wherein said means for proposing questions, obtaining answers, analyzing answers and said extracting means is application software, said questions appear at a monitor associated with said remote computer, and said answers are made with use of said monitor; See Fig. 3; 5:1-43; 6:40-47.

As to claim 7,

wherein said ergonomics resources include at least one database in addition to any databases associated with said ergonomics programs wherein the Internet is deemed to have other databases associated with ergonomics programs; See Fig. 3; 5:31-43; 6:40-47.

As to claim 8

wherein a user may access at least one database not maintained by said system wherein the Internet is deemed to be such a system; See Fig. 3; 5:31-43; 6:40-47.

As to claim 9

wherein a user may access to at least one ancillary data base wherein the Internet is deemed to be such a database; See Fig. 3; 5:31-43; 6:40-47.

As to claims 10, 16, and 20, as best taught and understood,

wherein said system is an expert system useful to laymen in the field of ergonomics wherein a user is deemed to include laymen in the field of ergonomics wherein the Internet is deemed to be such a system.

As to claim 12, as best taught and understood,

ergonomics resources embedded in a storage media, said resources including at least one ergonomics program for a work-site of interest, which, in turn, includes at least one database relating said work-site of interest; See Fig. 3; 5:31-43; 6:40-47; a computer with means for interfacing with said media, downloading said ergonomics resources, and extracting said at least one database for said work-site of interest; See Fig. 3; 5:31-43; 6:40-47.

As to claim 13, as best taught and understood,

wherein said extracted database may be made available in the form of a report; See Fig. 3; 5:31-43; 6:40-47.

As to claim 14, as best taught and understood,

wherein said at least one ergonomics program is a plurality of ergonomics programs and said at least one database is a plurality of databases wherein each user is deemed to have an analysis of various users and is distributed to various users deemed to be a plurality of databases and wherein the website has a central database and the International database are deemed to form a plurality of database; See Fig. 3; 5:31-43; 6:40-47.

As to claim 15, as best taught and understood,

wherein said at least one ergonomics program is one ergonomics program; See Fig. 3; 5:31-43; 6:40-47.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11 and 17, as best taught and understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern et al. U.S. Patent No. 6,592,223 ('Stern').

Stern discloses the claimed invention except for the ergonomics program conforms to government regulations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide for the ergonomics program conforms to government regulations since it was known in the art that government regulations pertain to ergonomics and have such minimal standards in place that a workplace must adhere to legally would be provided in an ergonomic system which is done to protect workers safety and Stern discloses several accepted guidelines and standard tests; See 3:37-40; 4:61-67; 5:54-61.

(11) Response to Argument

Firstly, Appellant argues that the rejection of claims 10, 12 -18 under 35 USC 112, second is moot and that claim 10 is deemed to be clear as written.

In response, Examiner has withdrawn the 112 rejections to claims 12-18, however, claim 10 is deemed to still be rejected as not written clearly as stated above.

Secondly, Appellant refers to "government regulations."

In response, Examiner's position is that Appellant appears from the claims to be stating that the government has regulations for software regarding ergonomics. If that is the case and what Appellant is referring, then the claims are sufficient as already stated, however if Appellant is referring to the execution of the software will provide information or some function that will conform to government regulations regarding ergonomics, then a change to clarify this will be necessary.

Thirdly, Appellant argues that the rejection of claims 1-23 under 35 USC 102(e) is improper as being anticipated by Stern. In particular, that Stern does not disclose an ergonomic program having six elements and that there are no controls for a finger, hand, elbow, shoulder, back, and neck positions for the Stern work-site.

In response, Examiner maintains that Stern discloses the limitations as claimed wherein the six elements are (1): management leadership deemed to be recommendations of corporate ergonomic staff and or users' eye care professional; See 5:36-43; (2): employee participation deemed to be actual user itself; See 5:40-44 and 5:63-66; (3): WMSD (work-related musculoskeletal disorders) management deemed to

be eyestrain, typing speed, mouse clicks, and engagement time and errors; See 5:54-62; 6:1:20; (4): job hazard analysis is deemed to be the testing and analyzing of the elements stated for element (3) including the environmental issues; See 6:1-39; (5): hazard reduction and control is deemed to be the minimizing the environmental and elements stated in (3) including alerting and training the user to work in a proper position to reduce the hazards of the elements listed including glare and eyestrain; See 6:1-64; (6): training which is deemed to be provided as stated previously in response to element (5); See also 5:20-25.

Further, in Appellant's specification on page 11, lines 15-20, "up to six standard elements be implemented for all ergonomics programs" and that "the regulations may be modified." Page 16, lines 5-6, states "Quick Fix requires that a subset of the six standard elements be implemented." Appellant's Brief on pages 14-15 state "An ergonomics program is clearly taught in the application as ordinarily having six elements. While these elements may be somewhat modified, one element alone (Stern has only one element) does not constitute an ergonomics program)."

From Appellant's specification and Brief, Examiner understands Appellant's invention can contain one "1" element up to six "6" elements and while all six are identified in Stern, only one is necessary to satisfy Appellant's claim limitations, since the claims can "ordinarily have six", that the elements "may be modified," and/or "up to six elements," constitute an ergonomics program according to Appellant's specification.

The controls for the finger, hand, elbow, etc.,, are not in Appellants' specification or claimed, therefore Appellant argues that which is not claimed.

In response to Appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., [controls for the finger, hand, elbow, etc.,,]) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Stern does disclose monitoring eyestrain which would involve the eyes, shoulders, back and neck position and mouse clicks which would involve the hand, finger, elbow, and shoulders; See 6:1-39.

Fourthly, Appellant argues that the ergonomics programs are expert level and that Stern does not teach experts or having an expert system.

In response, Examiner maintains that Stern discloses the expert system wherein the system makes recommendations and that professionals such as ergonomic staff and eye care professionals are part of the system and each are deemed to be experts including the recommendation aspect wherein Stern's system asks and answers questions, tests, and provides recommendations without an external expert.

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Lastly, Appellant argues that the Examiner erred in rejecting claims 11 and 17 under 35 USC 103(a) because it would not be obvious to have an ergonomics program to conform to government regulations.

In response, Examiner maintains that such would be obvious as claimed since Stern states that he uses the "Landolt C" vision testing patterns, a "Amsler Grid Test," guidelines accepted by the ophthalmic community, and rapid visual acuity testing, all deemed to be standard testing and that using a government regulation being a standard also would be obvious to one of ordinary skill in the art at the time of the invention as stated in the rejection; See 3:37-40; 4:61-67; 5:54-62.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Charles Rones
Primary Examiner
Art Unit 2164

December 21, 2004

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